

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

KAREN S. BRIDGE)	
Claimant)	
VS.)	
)	Docket No. 1,035,300
INFECTIOUS DISEASE CONSULTANTS, P.A.)	
Respondent)	
AND)	
)	
ST. PAUL MERCURY INSURANCE COMPANY)	
and TRAVELERS INDEMNITY COMPANY)	
Insurance Carriers)	

ORDER

Claimant appealed the March 11, 2008, preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

Claimant alleges she developed nasal and esophageal problems after inhaling acrid chemical fumes or vapor on July 1, 2004, while working for respondent. In the March 11, 2008, Order, Judge Clark ordered respondent and its insurance carriers to pay certain medical expenses. But the Judge denied claimant's request for additional medical treatment. The Judge seemingly determined claimant's present symptoms were not related to the July 1, 2004, incident at work as the Judge held in part:

Dr. Daniel Doornbas *[sic]* examined the Claimant on February 26, 2007, he states:

"It sounds as if there was at least a moderate degree of acute inflammation and irritation caused by the exposure, but I find it difficult to believe that she still has any ongoing severe damage from the above.

"I can clearly say she does not have any damage to her lungs or respiratory structures as such."¹

¹ ALJ Order (March 11, 2008) at 1.

Claimant contends Judge Clark erred. Claimant argues she is continuing to experience esophageal and nasal problems that were at least aggravated by her July 2004 exposure to chemical fumes. Accordingly, claimant requests the Board to reverse the March 11, 2008, Order.

Conversely, respondent and its insurance carriers argue claimant's present symptoms are not related to her July 1, 2004, exposure but, instead, they are from sinus and allergy issues that are unrelated to claimant's work. In short, they argue claimant failed to satisfy her burden of proof and, therefore, the March 11, 2008, Order should be affirmed.

The only issue before the Board on this appeal is whether claimant's ongoing esophageal and nasal problems are related to her alleged chemical exposure at work.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties' arguments, the undersigned Board Member finds and concludes:

Claimant, a microbiologist, worked in respondent's laboratory. On July 1, 2004, claimant inhaled some acrid fumes or vapor after opening an autoclave that had sterilized some pipette tips. Claimant instantly experienced breathing difficulties and went outside. Another person in the lab, Paula Rhinehart, experienced a headache.

Claimant was 60 years old at the time of the incident and had used autoclaves for years. This was the first time the vapor or steam from an autoclave had affected her. Before this incident, claimant had never experienced allergy symptoms and she had never received medical treatment for any upper respiratory, throat, esophageal, or sinus problem. Indeed, before this incident claimant had never been treated by an ear, nose, and throat (ENT) specialist.

The February 26, 2007, medical report of Dr. Daniel C. Doornbos describes the incident, as follows:

The patient denies any childhood respiratory illnesses or particular problems as an adult until 2004. On 7/1/04 she was at work in the microbiology lab attached to Dr. Goodpasture's office. She had received a shipment of laboratory pipettes and as usual had put them in an autoclave on the premises in the lab to sterilize them. When she returned to take the pipettes out of the autoclave, she got a breath of very caustic vapor which she says "knocked the wind out of me." She describes this as an acrid vapor making her eyes water and making her cough. She got only a breath or two of it and immediately went outside. She felt a little better after a few

minutes. She says others who were working in the area got headaches, but were not as strongly affected by the fumes. She says the fumes were eventually [removed] since the laboratory area had good ventilation. She was apparently told to try autoclaving them again in case something could be burned out of the autoclave, and she apparently was thus exposed to the situation again though to a less irritating extent. She says her throat felt swollen in the next two to three days. She says she found it was red and she found it hard to swallow. She also got a sinus infection.²

According to claimant it was later discovered that there was something wrong with the pipette tips rather than with the autoclave.

Claimant believes she reported the incident to her boss, Dr. Hewitt C. Goodpasture, the next day. Dr. Goodpasture began treating claimant's throat and sinus symptoms and tried various medications. But when that treatment did not help, the doctor sent claimant to Dr. Jerome French, an ENT specialist. Dr. French saw claimant one time, which was in November 2004, and diagnosed a sinus infection. The doctor prescribed medication, which helped somewhat, but claimant's symptoms did not completely resolve.

Dr. Goodpasture next referred claimant to an allergist, Dr. Rosenberg, whom claimant saw one time in June 2005. Dr. Rosenberg did not perform any allergy testing but he did give claimant some nasal spray, which did not help. Afterwards, Dr. Goodpasture referred claimant to Dr. Bongers, a family practice physician, whom she saw in April and September 2005. Dr. Bongers felt claimant needed allergy testing and he referred claimant to another allergy specialist, Dr. Scott, whom claimant saw one time in September 2005. Dr. Scott, however, did not do allergy testing as he felt claimant's problems stemmed from a chemical and he did not believe his tests would have provided help in diagnosing that. Accordingly, Dr. Scott sent claimant back to Dr. Bongers.

Next, Dr. Goodpasture referred claimant to Dr. Bunting, another ENT specialist, to see about allergy testing. Dr. Bunting did allergy skin testing, which indicated claimant "was allergic to every single thing except elm trees."³ The doctor told claimant she had developed a hypersensitivity from the incident with the autoclave. Claimant explained, as follows:

Q. (Ms. Marchant) My question is, did Dr. Bunting tell you that the symptoms you were having at that time were caused by exposure to these allergens that he had discovered you were allergic to?

² P.H. Trans., Resp. Ex. 2. at 1.

³ Bridge Depo. at 28.

A. (Claimant) Well, he said it was some kind of hypersensitivity, because I wasn't allergic before, and after this toxic chemical, I developed this sensitivity to everything.

Q. Did he say you had developed all these allergies because you were exposed to the chemicals?

A. That's what he felt.⁴

Dr. Bunting gave claimant sublingual drops to try to build claimant's resistance to allergens. As of her February 2008 deposition, that treatment had not helped.

Claimant next saw Dr. Bales, who performed blood testing. Dr. Bales also prescribed Prevacid and Pepto-Bismol because the doctor thought maybe claimant's throat was being irritated by acid reflux. Dr. Bales also referred claimant to Dr. Beamer for a possible surgical procedure on claimant's throat.

Despite consulting all those doctors and treating with Dr. Goodpasture throughout, claimant testified at her March 2008 preliminary hearing that she continues to have a sore throat, trouble swallowing, and respiratory congestion. Claimant's testimony is uncontradicted that she never experienced these problems before inhaling the acrid fumes from the autoclave.

Claimant introduced the December 5, 2007, medical report of Dr. Goodpasture. In that report, the doctor, who worked with claimant for approximately 20 years, stated claimant's condition may be aggravated by her allergies but her allergies were not the primary cause. The doctor wrote, in part:

On July 1, 2004, [claimant] experienced a noxious fume exposure from an autoclave that resulted in acute injury to her mucous membranes of her nose and throat characterized by redness and hyperreactivity. This acute episode subsided in 2-3 days, but Karen continued to have some chronic symptoms of hyperreactivity following that. She did not miss work as a result of the acute injury or the follow-up condition, but the symptoms were bothersome and she had difficulty in tolerating routine antihistamines and decongestants.

She subsequently was referred to Dr. Jerome French in November of that year and has seen several physicians since that period of time for advice, counsel, and treatment of this condition. Allergy testing shows that she does react to a number of allergens, and she has a positive family history for allergic sensitization.

⁴ *Id.* at 29.

However, prior to this episode, Karen had no problems with allergies and did not take any medications to prevent hyperreactivity of her mucous membranes.

Karen incurred some medical expenses at the time of this acute injury and in the evaluation that occurred subsequent to that to determine any other possible causes of the continued problem. There is no doubt that her allergies may play some role in this condition; however, it is very clear from the temporal sequence of events and her history that prior to this exposure she did not have any symptomatic problems with allergens. Therefore, one would conclude that her allergies, although aggravating this condition, were not the primary cause of it.⁵

On the other hand, respondent presented the medical opinion of Dr. Daniel C. Doornbos, who performed a pulmonary examination at respondent's request. Dr. Doornbos concluded:

1. History of occupational inhalation of apparent toxic or caustic materials in July of 2004. The exact chemicals she inhaled have never been fully documented, but it sounds as if these may have been breakdown products perhaps from plastic in the packaging. It sounds as if there was at least a moderate degree of acute inflammation and irritation caused by the exposure, but I find it difficult to believe that she still has any ongoing severe damage from the above.
2. I can clearly say she does not have any damage to her lungs or respiratory structures as such.
3. More than one observer has observed a considerable discrepancy between her current symptoms and the relatively minimal findings on physical examination. I do not have a real explanation for that.
4. It would seem to me that although she appears symptomatic, the fact that there are fairly minor physical abnormalities detectable and that she has not missed any work would tend to say that she is not, in fact, disabled by whatever injury she had.
5. She may have some degree of ongoing laryngopharyngeal reflux which could be contributing to her throat irritation. This may have begun because of some cough and anxiety around the time of her injury and may have simply propagated itself because of persistent coughing.⁶

The undersigned finds a close reading of Dr. Doornbos' assessment does not rule out that claimant's ongoing symptoms are related to the incident with the autoclave.

⁵ P.H. Trans., Cl. Ex. 1.

⁶ *Id.*, Resp. Ex. 2 at 2.

The undersigned finds the evidence establishes that claimant did not have any esophageal, sinus, or nasal problems before she breathed in the acrid vapors at work. And those symptoms have not resolved. The undersigned is persuaded by Dr. Goodpasture's opinion that claimant's allergies may have some part in her ongoing symptoms, but those allergies did not cause her present condition. In short, the incident at work caused claimant's ongoing symptoms and, therefore, she is entitled to receive medical treatment for those symptoms. Consequently, the March 11, 2008, Order should be reversed in that respect.

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁷ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2007 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

WHEREFORE, the undersigned reverses the March 11, 2008, preliminary hearing Order and finds claimant's present symptoms arose out of and in the course of her employment with respondent. Accordingly, claimant is entitled to receive medical treatment under the Workers Compensation Act and this claim is remanded to the Judge for further orders consistent with the findings above. The order providing payment of certain medical expenses by respondent and its insurance carriers is affirmed.

IT IS SO ORDERED.

Dated this ____ day of May, 2008.

KENTON D. WIRTH
BOARD MEMBER

c: James B. Zongker, Attorney for Claimant
Ali N. Marchant, Attorney for Respondent and its Insurance Carriers
John D. Clark, Administrative Law Judge

⁷ K.S.A. 44-534a.